

NOW COMES the Plaintiff, Brian D. Blankenship, pro se, and pursuant to Rule 15(a)(2) and Rule 41(a)(2) of the Federal Rules of Civil Procedure, hereby moves this Court for an Order granting leave to voluntarily withdraw Count VII from the Amended Complaint.

In support of this motion, Plaintiff states as follows:

1. The original Complaint in this action was filed on February 10, 2023 and the Amended Complaint was filed on February 24, 2023 (Document #6, Filed: 02/24/23 with the United States District Court for the Northern District Of Illinois (“ILND”).
2. The Amended Complaint contained 16 Counts, including Count VII.
3. Plaintiff acknowledges Defendant’s Motion to Dismiss Plaintiff’s Amended Complaint filed May 5, 2023 and the May 16, 2023 Order requiring Plaintiff’s Opposition to the Motion to Dismiss to be filed by July 17, 2023.
4. Plaintiff apologizes to the Court for the inclusion of COUNT VII, Section 1558 of the Patient Protection and Affordable Care Act (“ACA”) Retaliation claim.
5. The ACA count, Count VII in the ILND case, is also included in an appeal currently pending before the Office of Administrative Law Judges (OALJ) in relation to an OSHA whistleblower claim against Defendant. The appeal before the OALJ was filed on December 29, 2022 and is assigned OALJ Case No.: 2023-ACA-00002 and OSHA Complaint No.: 5-2330-22-037.
6. The ACA count was mentioned in the ILND case incorrectly without appropriate detail, and it was not the Plaintiff’s intent to have that claim heard by ILND. Given Plaintiff’s status as a pro se litigant without formal legal training, the inclusion of the ACA count in the ILND case was a genuine error borne out of misunderstanding of the jurisdictional complexities involved. The assumption was that comprehensive detailing of the issues in the ILND case would be appropriate, not realizing the exclusive jurisdiction OALJ maintains over ACA claims. Plaintiff intended the ACA count to be adjudicated by OALJ.
7. Plaintiff wishes to voluntarily withdraw Count VII from the Complaint to avoid any potential jurisdictional conflict.
8. Granting this Order will not unduly delay the proceedings.
9. Defendant will not be prejudiced by the withdrawal of Count VII from the Complaint, as it reduces the number of claims against them.
10. The withdrawal of Count VII requires the removal of text on Pages 3, 4, and 18 of the Amended Complaint. No other changes, additions or deletions are necessary. These three pages, with the red-lined removed text, are attached hereto as Exhibit 1.

11. A Second Amended Complaint, which reflects the voluntary withdrawal of Count VII, is attached hereto as Exhibit 2.

WHEREFORE, Plaintiff respectfully requests this Court to enter an Order granting Plaintiff leave to voluntarily withdraw Count VII from the Amended Complaint.

DATE: June 20, 2023

Respectfully submitted,

By: /s/ Brian D. Blankenship
Plaintiff, Pro Se

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 20, 2023, he caused a copy of the forgoing **Plaintiff's Motion For Leave to Voluntarily Withdraw Count VII From the Amended Complaint** (with Exhibits) to be filed with the Court by electronic filing protocols, and that same will ther3efore be electronically served upon all attorneys and parties of record registered with the Court's ECF/CM system and by electronic mail.

/s/ Brian D. Blankenship